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14 *Attorneys for Defendants*
15 *UnitedHealth Group Inc. and*
16 *UnitedHealthcare, Inc.*

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA

19 ESTATE OF BIBI AHMAD,
20 individually and on behalf of all others
21 similarly situated,

22 Plaintiff,

23 v.
24 UNITEDHEALTH GROUP INC.,
25 UNITED HEALTHCARE INC., and
26 DOES 1-5, inclusive,

27 Defendants.

28 CASE NO. 8:23-CV-02303-MRA-DFM

29 **DEFENDANTS' RESPONSE TO**
30 **PLAINTIFF'S UNAUTHORIZED**
31 **LETTER BRIEF**

32 **Hearing:**

33 Date: TBA
34 Time: TBA
35 Place: Courtroom 10B
36 Judge: Hon. Mónica Ramírez
37 Almadani

1 Defendants UnitedHealth Group Inc. and UnitedHealthcare, Inc. respond to the
2 Estate's June 15, 2024 Letter Brief, Dkt. 35, which provides unauthorized supplemental
3 briefing on *Garland v. Cargill*, 602 U.S. ____ (2024).

4 1. The Estate's supplemental brief concedes that *Do Sung Uhm v. Humana, Inc.*, 620 F.3d 1134 (9th Cir. 2010), forecloses its principal argument that only Medicare
5 Advantage (MA) organizations can invoke Medicare preemption. Dkt. 35 at 3
6 (admitting that *Uhm* "appear[s]" to apply preemption to claims under "state laws of
7 general applicability" when brought against affiliates). Because the Estate does not
8 argue that the Supreme Court's decision in *Cargill* is clearly irreconcilable with *Uhm*,
9 the Ninth Circuit's decision remains binding precedent. *See Miller v. Gammie*, 335 F.3d
10 889, 900 (9th Cir. 2003); *see also Avilez v. Garland*, 69 F.4th 525, 533 (9th Cir. 2023)
11 (explaining that Ninth Circuit decisions must be followed so long as they can be applied
12 "consistently with that of the higher authority"").

14 2. In any event, *Cargill* has no conceivable relevance to Defendants' pending
15 motion to dismiss. The premise of the Estate's supplemental brief is that *Uhm* endorsed
16 a CMS regulation that extended preemption beyond MA organizations. Dkt. 35 at 2–3
17 (complaining about "CMS's expanded regulatory modification of preemption to include
18 affiliates"). But the Estate is mistaken about the source of preemption for claims against
19 affiliates: *Uhm* rests on the text of a *congressional statute*, which supersedes state law
20 "with respect to MA plans"—not only with respect to claims against MA organizations.
21 42 U.S.C. § 1395w-26(b)(3); *see Uhm*, 620 F.3d at 1157–58. What the Estate says is
22 required—"an express congressional statute explicitly setting forth preemption as to the
23 non-MAO entities or affiliates," Dkt. 35 at 3—is precisely how the Ninth Circuit
24 interpreted § 1395w-26(b)(3) in *Uhm*.

25 3. The nature of the challenge in *Cargill* was also completely different from
26 the Estate's state-law claims against Defendants in this case. In *Cargill*, the plaintiff
27 filed suit against the Attorney General and other federal officials under the
28 Administrative Procedure Act, 5 U.S.C. § 706(2)(A), asserting that an agency rule was

1 invalid because it was “not in accordance with the law.” Here, by contrast, the Estate
2 has sued two private entities under state law and has not challenged any particular CMS
3 regulation under the APA. And regardless, even if the Estate were to bring an APA
4 claim against federal officials now, asserting that CMS lacked authority to extend its
5 regulatory scheme to marketing and communications by an MA organization’s affiliates
6 and agents, that argument would flatly contradict Congress’s grant of authority for CMS
7 to “establish by regulation other standards . . . for [MA] organizations *and* plans
8 consistent with, and to carry out, this part [*i.e.*, Part C].” 42 U.S.C. § 1395w-26(b)(1)
9 (emphasis added). It is the Estate, not CMS, that seeks to defy the congressional design
10 of Part C.

11 4. The Estate continues to burden this Court and Defendants with baseless and
12 time-consuming filings. The Estate has turned a Rule 12(b)(6) motion on a plainly
13 preempted set of state-law claims into a marathon of briefing with a request for judicial
14 notice of irrelevant documents, an ex parte application to inject “extrinsic evidence” into
15 a pleadings challenge, serial emails to this Court’s courtroom deputy, and now an
16 unauthorized letter brief (in violation of Local Rule 83-2.5, *see* Dkt. 36) asking for even
17 more briefing to discuss a totally off-point case that sheds zero light on the proper
18 interpretation of Medicare Part C’s preemption statute. Enough is enough. Because
19 even the Estate now concedes that Medicare preempts its claims under binding Ninth
20 Circuit precedent, the Court should dismiss the Complaint with prejudice.

21
22 Dated: June 17, 2024

23 GIBSON, DUNN & CRUTCHER LLP
24

25 By: /s/ Kahn Scolnick
26 Kahn Scolnick

27 Attorneys for Defendants UnitedHealth Group
28 Inc. and UnitedHealthcare, Inc.

CERTIFICATE OF COMPLIANCE

The undersigned, counsel for record for Defendants UnitedHealth Group Inc. and UnitedHealthcare, Inc., certifies that this motion contains 607 words, excluding the portions exempted by and complying with Local Rule 11-6.1.

Dated: June 17, 2024

By: /s/ Kahn Scolnick
Kahn Scolnick